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5 SELF-REPRESENTED
6 (CA SBN# 319955)
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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DONGXIAO YUE,
12 Plaintiff,
13 v.
14 CHUN-HUI MIAO, et al.,
15 Defendants.
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19

Case No. C18-1074-DMR

**PLAINTIFF'S REPLY TO DEFENDANTS'
OPPOSITION TO MOTION TO REMAND
TO STATE COURT**

(28 U.S.C. § 1447(c))

Hearing Date: May 10, 2018
Time: 11:00 AM
Courtroom: 4, 3rd Floor

Judge: The Honorable Donna M. Ryu

1 None of Defendants' factual contentions in their opposition was supported by a sworn
2 declaration, in non-compliance with Civil Local Rule 7-5. Plaintiff requests that the Court
3 disregard any such unsupported factual contentions. Plaintiff will respond to Defendants' legal
4 contentions below.

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6 **I. The Court Record Shows that Defendant's Removal Was Untimely**

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8 "[A]n application is 'properly filed' when its delivery and acceptance are in compliance
9 with the applicable laws and rules governing filings. These usually prescribe, for example, the
10 form of the document, the time limits upon its delivery, the court and office in which it must be
11 lodged, and the requisite filing fee." *Artuz v. Bennett*, 531 U.S. 4, 8 (2000).

12
13 Civil Local Rule 1-5(e) defined "File" as follows.

14 "File" means delivery to and acceptance by the Clerk of a document,
15 including an electronic document, which is approved for filing and
16 which will be included in the official files of the Court and noted in
17 the docket of the case. Under urgent circumstances and for good
cause shown, Judges may accept documents for filing.

18 Under this definition, mere delivery by mail of a document to the Clerk is insufficient for filing.
19 The document must also be "accepted" and "approved for filing".

20
21 Defendants claimed that their Notice of Removal was delivered to the mailbox of the
22 Clerk's office on March 15, 2018. Even assuming this was true, Defendants failed to show (1)
23 what documents were delivered, (2) whether the documents were approved for filing that day.

24
25 Docket item 1-2 shows the coversheet was faxed from 1-877-233-3839 on February 20,
26 2018. It also shows that the filing fee was paid on February 20, 2018 with a credit card. The cover
27 sheet and filing fee were required for filing. Consistently, the docket entry shows dates "(Filed on

1 2/20/2018) (Entered: 02/21/2018)". It is evident that the Notice of Removal was not "filed" until
2 February 20, 2018, after the expiration of the mandatory 30-day period for removal. The case
3 should be remanded.
4

5 **2. Defendants Reliance on Precedents Involving Amended Complaints is Misplaced**

6 Defendants characterized Plaintiff's only complaint filed in the state court as "the initial
7 complaint", then turned to various class action cases which involved amended complaints for
8 support. Both *Roth v. CHA Hollywood Medical Center, L.P.*, 720 F.3d 1121 (9th Cir. 2013)
9 (removal based on amended class action complaint) and *Kuxhausen v. BMW Fin. Servs.*, 707 F.3d
10 1136, 1140-41 (9th Cir. 2013) (removal based on amended class action complaint) involved
11 amended complaints which became removable. Both cases are inapposite here because there is no
12 amended complaint in this case.
13
14

15 Defendants' reliance on the *Rea v. Michaels Stores Inc.*, 742 F.3d 1234 (9th Cir. 2014) is
16 equally misplaced. In that class action, the district court remanded the case on the ground that the
17 amount-in-controversy requirement was not satisfied due to an asserted damages waiver. After
18 the U.S. Supreme Court held in *Standard Fire Insurance Co. v. Knowles* that such damages
19 waivers are ineffective, the defendant removed again. Thus, *Rea v. Michaels Stores Inc.* involved a
20 situation where the change of law made a complaint removable.
21

22 There is neither an amended complaint nor a change of law (or other situation) in this case.
23 Defendants are taking *inconsistent* positions regarding the removability of the case. In their
24 Notice of Removal, Defendants argued the amount of controversy requirement purely based on
25 comparisons with a 2004 and a 2007 case, both more than 10 years old. See, Notice of Removal at
26
27
28

¶10. Now they contend that plaintiff's complaint "did not reveal from its face that this matter was removable". (Opposition at p.9:23-24.)

In other words, to oppose the Plaintiff's motion to remand based on untimeliness, Defendants now admit that the two 10-year old cases they cited/quoted in their Notice of Removal were insufficient to demonstrate the amount of controversy requirement, they needed more support. Since they admit that their Notice of Removal was defective, the case should be remanded.

CONCLUSION

Plaintiff respectfully requests that the Court remand the case to the Superior Court of California.

Respectfully submitted.

Dated: March 22, 2018

/S/

DONGXIAO YUE